

1 Gabriele-People-Cross

2 it says Sweeney on the left of it?

3 A Disregard that.

4 Q What is Sweeney?

5 A Sweeney is the victim in one of the cases.

6 Q So what number is a definite?

7 A I will read them to you.

8 Q Good.

9 A 212-252-2061.

10 Q Just do the last four numbers.

11 A 0009. 0134. 0402. 0556. 5282. 1418.

12 3713. 0698. 0555. 0575. 1699. 3693.

13 Q Okay.

14 And what about the numbers that are
15 circled up above it?

16 A That is just some notes I took initially,
17 before we went through all the voice recordings.

18 Q What do those things mean?

19 A I was going to list all of the numbers
20 initially, but I did it later on, after we listened to
21 it.

22 Q 347-623-1549, what about that?

23 A That was one of the numbers involved in
24 some of the cases and I asked her if she recognized
25 whose number that was.

1 Gabriele-People-Cross

2 Q What did she say?

3 A She did not recognize it.

4 MR. PEARL: Objection.

5 THE COURT: Sustained.

6 It was -- the witness already
7 answered the question.

8 Q 212-561-1482, with the name Tiesha Lamont?

9 MR. PEARL: Objection.

10 Q Was she asked about that?

11 THE COURT: The basis.

12 MR. PEARL: Relevance. Beyond the
13 scope.

14 THE COURT: Offer of proof,
15 Mr. Keahon, briefly.

16 MR. KEAHON: Yeah.

17 Instead of going back to statements
18 and taking forever, I don't know if this is one
19 of the numbers that she listened to.

20 THE COURT: To save time, I will
21 allow it. If it saves time.

22 MR. KEAHON: Good.

23 A Yes, that is one of the numbers she
24 listened to.

25 Q What does she say?

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A She identified that voice, a Tiesha
Lamont.

3

4

Q And who did she say Tiesha Lamont was?

5

A That is her sister.

6

7

Q Did she identify her voice on any of
these?

8

A No, she did not.

9

Q Or her phone number?

10

A No, she did not.

11

12

Q Or indicate to you that she knew any of
the other phone numbers?

13

A No, she did not.

14

MR. KEAHON: I have nothing further,
thank you.

15

16

THE COURT: Thank you.

17

Any redirect?

18

19

MR. PEARL: No, thank you, Your
Honor.

20

21

THE COURT: Thank you very much,
Detective, you may stand down.

22

23

MR. KEAHON: Oh, may I just have one
second.

24

I am good. Fine. Thank you.

25

(Whereupon witness leaving witness

Proceedings

stand.)

THE COURT: We had a brief side-bar conference before.

You have an application, I believe.

MR. PEARL: Oh yes.

I have an application to have an Order of Protection issued, Your Honor. At this time I am asking the Court issue an Order of Protection in favor of Valerie Rodriguez, that, being she is a witness on this case and the CPL provides the Court jurisdiction issue subpoenas for witnesses on pending trial matters.

I do that specifically, Your Honor, in reference to within the last two weeks, this defendant has contacted her. Particularly, as the case gets closer to trial, she has expressed a fear to us. We were holding off on issuing an Order of Protection but now we are asking the Court to issue the Order of Protection based on today's hearing.

THE COURT: Thank you.

Do you wish to be heard, Mr. Keahon?

MR. KEAHON: Yeah.

The predicate has not been set at

1 Proceedings

2 all. There is no indication that my client has
3 harassed, bothered, persuaded, pressured or done
4 anything.

5 THE COURT: Thank you.

6 Over your objection, Mr. Keahon, the
7 Court finds, that based upon the evidence
8 adduced at the hearing today as well as the
9 colloquy of counsel, which the Court is allowed
10 to take into consideration, I find that good
11 cause has been shown pursuant to Section 530.13
12 of the Criminal Procedure Law for the issuance
13 of a Temporary Order of Protection.

14 By your leave, counsel,
15 Mr. Whitehead, I am signing an Order of
16 Protection which will remain in pull force and
17 effect for one year from today's date unless
18 otherwise directed by the Court, directing you
19 to have no contact whatsoever with
20 Miss Rodriguez.

21 If you violate the terms of this
22 order, which will be served upon you at this
23 time, then charges could be filed against you
24 which could result, depending upon the manner in
25 which the Order of Protection is violated, you

1 Proceedings

2 receiving up to two and a third up to seven
3 years in State Prison.

4 Please confer with your attorney.

5 (Whereupon defendant conferring with
6 Mr. Keahon.)

7 MR. KEAHON: We are fine, Judge.

8 THE COURT: Thank you.

9 MR. KEAHON: I mean I take exception
10 to the Court's ruling but--

11 THE CLERK: Mr. Whitehead, you need
12 to sign each one of these on the "X". What you
13 are doing is acknowledging receipt of a copy of
14 the Temporary Order of Protection.

15 MR. KEAHON: You have to do each one.

16 THE DEFENDANT: (Complying.)

17 THE COURT: In light of the time
18 the -- the People I think had indicated that
19 that was their sole witness.

20 MR. PEARL: Yes, Judge.

21 THE COURT: People rest for the
22 purposes of the hearing?

23 MR. PEARL: Yes, Your Honor.

24 THE COURT: The People having rested,
25 do you anticipate calling anyone?

1 Proceedings

2 MR. KEAHON: No, Judge.

3 THE COURT: Then in light of the
4 time, the Court will allow counsel to make
5 their, excuse me, as far as closing arguments,
6 at this time.

7 MR. PEARL: I am jumping the gun.
8 Sorry.

9 THE COURT: Closing arguments
10 concerning this aspect of the hearing.

11 MR. KEAHON: I will rest on the
12 hearing.

13 MR. PEARL: People rest on the
14 testimony.

15 THE COURT: Thank you.

16 Then the Court will issue it's
17 decision tomorrow afternoon, immediately prior
18 to the resumption of jury selection.

19 MR. KEAHON: Judge, I just have one
20 request. I don't know whether it is contained
21 in the volumes, those 3,000 pages, but I would
22 like any Giglio material, any cooperation
23 agreements, any agreements on sentencing,
24 anything at all, any benefit that -- any of the
25 witnesses.

1 Proceedings

2 MR. PEARL: Within the Rosario
3 Material is the plea minutes taken, where
4 Assistant District Attorney Douglas Burns set up
5 the agreement that, I believe, it is that she
6 was going to get six and five or five straight,
7 in essence, what the plea minutes will say.

8 MR. KEAHON: Or is it that she can do
9 better but the cap is six and five?

10 THE COURT: The important question
11 is, it doesn't have to be discussed here, merely
12 in the People feel comfortable affirming that
13 that has been turned over.

14 MR. PEARL: Yeah, the plea minutes
15 are.

16 MR. KEAHON: Is there any other
17 witness that you are going to call that has
18 received any benefit whatsoever or may?

19 MR. PEARL: No. No cooperation.

20 THE COURT: The Order of Protection,
21 Mr. Keahon, do you acknowledge receipt of the
22 Order of Protection served upon your client at
23 this time?

24 MR. KEAHON: Yes.

25 THE COURT: Thank you.

1 Proceedings

2 Yes.

3 MR. PEARL: Just to revisit the
4 Molineux application, I am doing that now
5 because of the hearing we did, is that I would
6 like the Court to consider specific reference to
7 the piece of paper where the defendant was, we
8 submit, the defendant was actively altering
9 paperwork. I already made my Molineux
10 application.

11 THE COURT: I wrote that down as far
12 as one of the aspects you sought the Court to
13 rule on.

14 MR. PEARL: I would like to extend
15 it. It is important for the Court to know these
16 blocked numbers were all in blocks of ten and
17 ten, and there is an identification of Tiesha
18 Lamond using the name Katherine Reed. That was
19 the message, 1482, that Detective Gabrielle just
20 testified to. It is important. Those blocks of
21 numbers are coming together. It is important
22 when Your Honor considers the Molineux
23 application, specifically, is that this
24 defendant was altering Katherine Reed's W-3 Form
25 and I want that -- I wasn't putting in my

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1
2 Molineux application, I am holding it. It was a
3 significant issue for relevancy that the Court
4 ties much stronger into the Molineux application
5 to be probative. It is probative, necessary.

6 THE COURT: Thank you.

7 MR. PEARL: Just so the Court's
8 aware, I still suggest it goes to all the
9 intent. I want the Court to fully understand
10 now that Tiesha Lamont's phone number has come
11 out.

12 THE COURT: I won't ask you to
13 respond as per our discussion at this time.

14 MR. KEAHON: Yes, Judge.

15 THE COURT: The Court will stand to
16 reconvene two o'clock tomorrow for the
17 resumption of this trial.

18 I will see -- Mr. Whitehead, you are
19 free to go, I will see you tomorrow afternoon.

20 MR. KEAHON: Two o'clock.

21 THE COURT: Two o'clock, yes, thank
22 you.

23 (Whereupon the case was recessed to
24 February 7, 2008, 2:00.)
25

COUNTY COURT OF THE STATE OF NEW YORK

COUNTY OF SUFFOLK : TRIAL TERM: PART 7

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THE PEOPLE OF THE STATE OF NEW YORK

CASE NO.
537-07

-against-

LAMAR WHITEHEAD,

190.65-01

Defendant

VOIR DIRE
& TRIAL

-----x

Riverhead, New York
February 7, 2008, 2pm

BEFORE: HON. JAMES HUDSON,
County Court Justice

APPEARANCES:

HON. THOMAS J. SPOTA, ESQ.
District Attorney of Suffolk County
For the People
200 Center Drive
Riverhead, New York

BY: RAPHAEL PEARL, ESQ.
Assistant District Attorney

JODI FRANZESE, ESQ.
Assistant District Attorney

WILLIAM KEAHON, ESQ.
Attorney for Defendant
One Suffolk Square
Islandia, New York

BARBARA O'DONNELL
Official Court Reporter

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Proceedings

THE CLERK: Case on trial, People versus Whitehead, all parties present, outside the presence of the prospective jury.

THE COURT: Thank you.

After the hearing on the question of the confirmatory nature or not of certain voice identifications pertaining to the witnesses Mr. Nigel Defreitas, Valerie Rodriguez, and Anita Bryant, the Court heard the testimony adduced by the People of Detective Thomas Gabriele, we found him to be in all respects a credible witness. His testimony demonstrated that regarding Mr. Defreitas, that they had been friends or acquaintances for approximately, four to five years, and had spoken numerous times. The relationship between Mr. Whitehead and Miss Rodriguez was that of a close friendship which existed for a period of approximately, ten months. And Miss Anita Bryant had also claimed to know Mr. Whitehead for a period of well over ten years. And in fact, did claim a familial relationship.

The Court finds that the People have proved by clear and convincing evidence, that

1 Proceedings

2 the voice identification was merely confirmatory
3 and it was non-suggestive.

4 In all respects the motion to
5 suppress, therefore, will be denied, and your
6 exception to the Court's ruling, Mr. Keahon,
7 will be duly noted.

8 MR. KEAHON: Thank you, Judge.

9 THE COURT: Thank you.

10 (Whereupon the case was recessed.)

11 THE CLERK: Case on trial, People
12 versus Whitehead, all parties present, outside
13 the presence of the prospective jurors.

14 THE COURT: Thank you.

15 Before we bring in the prospective
16 jurors, our new jurors who are selected have not
17 received all of the initial questions from the
18 Court. That is Miss Laguerra -- is it Miss
19 Roddy --

20 MR. KEAHON: Yes.

21 THE COURT: Mr. Castro, Mr. Stingley,
22 and Mr. Calleja.

23 MR. KEAHON: That is correct.

24 THE COURT: I just want to see if I
25 missed anyone from yesterday.

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Proceedings

MR. PEARL: Those are the ones I
have.

THE COURT: Those are the ones you
have as well, Mr. Keahon?

MR. KEAHON: Yes.

How about Vannostrand?

THE COURT: Vannostrand.

MR. KEAHON: Yeah.

THE COURT: Was Mr. Vannostrand one
of the original group?

MR. KEAHON: He may have been, I am
not sure.

THE COURT: What I will do is address
my initial remarks, I will say to our newly
selective jurors as of yesterday afternoon,
bring them up to speed.

MR. KEAHON: Great.

THE COURT: Anything to place on the
record before we bring in our prospective
jurors?

MR. KEAHON: No, there is not, Your
Honor.

THE COURT: We will bring in our
jury.

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Proceedings

(Whereupon prospective jurors
entering courtroom.)

THE COURT: Good afternoon.

THE CLERK: Case on trial, People
versus Whitehead, prospective jurors, all
parties present.

THE COURT: Are the People ready to
proceed?

MR. PEARL: Yes, Your Honor.

THE COURT: The defense?

MR. KEAHON: I am, sir.

THE COURT: Thank you.

Thank you all once again.

Now to bring our new jurors up to
speed, so to speak, the-- I will ask the initial
of the prerequisite questions I had asked when
all of you had been seated originally.

Now my questions at this point will
be directed to the new jurors who came in at the
second call last yesterday because you are all
veterans of the jury selection process at this
point in time.

And again, at any point in time, if
you have any questions that you wish to discuss

1 Proceedings

2 privately or any matter you wish to discuss
3 privately, merely let me know, I will be happy
4 to bring you in the jury room with counsel and
5 myself to discuss it.

6 These are to our new jurors.

7 Do you recognize any of the names or
8 recognize counsel or Mr. Whitehead or any of the
9 names of potential witnesses?

10 Remember that my mere mentioning of
11 any names does not impose any burden on either
12 side to call people.

13 Has anyone close to you had a
14 conflict with the law, aside from a vehicle and
15 traffic law infraction?

16 Has anyone heard about this case?
17 Work in law enforcement now or in the past? Or
18 work in a law office now or in the past?

19 Been the victim of a crime? Accused
20 of a crime?

21 We have some yes answers to that.

22 Now we will bring you in one at a
23 time into the jury room.

24 Have any of our new jurors have any
25 pre-jury or trial jury experience? Any

1 Proceedings

2 experience in Armed Forces? Any service?

3 Thank you once again, gentlemen, for
4 your service to your country.

5 That is Mr. Vannostrand.

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: And Mr. Stingley.

8 You heard the question that I-- I
9 also had asked you, Mr. Farmer.

10 PROSPECTIVE JUROR: Farmer, right.

11 THE COURT: You heard what I had
12 asked our veterans yesterday. You are familiar
13 with the Uniform Code of Military Justice during
14 your service to your country.

15 Would you be able to set that aside
16 and just use the law, the instructions I give
17 you?

18 PROSPECTIVE JUROR: Yes.

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: People who had their hand
21 up, we will bring you in one at a time and bring
22 you straight out.

23 Counsel.

24 (Whereupon the following took place
25 in the jury room.)

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Proceedings

(Whereupon prospective juror
entering.)

THE COURT: Miss Roddy.

PROSPECTIVE JUROR: It is not a
secret. It is just my sister is a detective.
That is it.

THE COURT: Okay. That is it?

PROSPECTIVE JUROR: Yeah, that is it.

THE COURT: You will be able to
follow my instructions regarding police officer
testimony you heard yesterday?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you. You can take
your potential seat seat with the other
potential jurors.

PROSPECTIVE JUROR: (Complying.)

(Whereupon prospective juror
entering.)

THE COURT: Mr. Stingley.

PROSPECTIVE JUROR: No, it is
Zakrewshi.

THE COURT: My apologies.

What seat are you in there, sir?

PROSPECTIVE JUROR: I think it is

Proceedings

six.

THE COURT: Okay. All right.

Mr. Zakrewshi, what yes answer did you have to discuss?

PROSPECTIVE JUROR: My father-in-law is retired NYPD and wife's uncle's retired NYPD. I have a niece who is a lawyer but she serves in Massachusetts Bar.

And my brother-in-law was killed. I don't know if you consider it a traffic accident. It was a police chase where they ran through his house. The car ended up running through his house and killing him. That was the crime in the family.

THE COURT: What was your brother-in-law's name?

PROSPECTIVE JUROR: Bill Calhoun. William Calhoun. On 109.

THE COURT: How closely did you follow that case?

PROSPECTIVE JUROR: Pretty closely. I didn't go to court at all. It was right after.

THE COURT: I was the Judge in that

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Proceedings

case.

So would that effect you sitting as a juror in this case?

PROSPECTIVE JUROR: I don't think so. I don't think they're related, are they?

THE COURT: No but it is just the matter you were coming before the Court. If you were coming before the Court and talk about this case with relatives and then my name came up, that is the reason.

PROSPECTIVE JUROR: I did recognize your name when it came up but it doesn't make a difference. You didn't ask the question.

THE COURT: The only thing, that is why I leave it with you, if any of your life experiences would have a bearing on your ability to be fair and impartial?

PROSPECTIVE JUROR: I don't think so.

THE COURT: Anything else you wish to discuss?

PROSPECTIVE JUROR: I don't think so.

THE COURT: When you said I don't think so, those are words of modesty. Can you promise both sides you can be fair and impartial

1 Proceedings

2 in this case?

3 PROSPECTIVE JUROR: I do that for a
4 living.

5 THE COURT: What do you do?

6 PROSPECTIVE JUROR: I run an
7 engineering group.

8 MR. KEAHON: I had a question.

9 Was it your brother-in-law that was a
10 police officer that was killed?

11 PROSPECTIVE JUROR: No, he wasn't
12 killed. My brother-in-law was just a homeowner,
13 he was in his living room, the police were
14 chasing the car, the guy lost control and ran
15 through his house.

16 THE COURT: So you don't have a
17 problem sitting on the case with knowing who I
18 am, as the Judge?

19 PROSPECTIVE JUROR: I don't think so.

20 THE COURT: When you say you don't
21 think so, you are an engineer?

22 PROSPECTIVE JUROR: No, I would not
23 have a problem.

24 THE COURT: You can say it to a
25 certainty?

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PROSPECTIVE JUROR: Yes.

THE COURT: Thank you.

Anything you wish to discuss
privately?

PROSPECTIVE JUROR: No.

THE COURT: Okay.

Any other questions touching on this?

MR. KEAHON: No.

MR. PEARL: No.

THE COURT: You can take your seat
with the other jurors. Thank you.

PROSPECTIVE JUROR: (Complying.)

THE COURT: Off the record.

(Whereupon there was a discussion off
the record.)

(Whereupon prospective juror
entering.)

THE COURT: Mr. Stingley.

PROSPECTIVE JUROR: Farmer.

THE COURT: Mr. Farmer. Oh my
apologies. Have a seat.

PROSPECTIVE JUROR: (Complying.)

THE COURT: You had a yes answer to
one or more of my questions?

1 Proceedings

2 PROSPECTIVE JUROR: Yes.

3 Okay. I remembered my sister had
4 problems with credit cards stolen and fraud
5 about eighteen years ago.

6 I have another sister who is a
7 special agent with the F.B.I., works in
8 Manhattan.

9 THE COURT: Would the fact that you
10 have relatives in law enforcement and your
11 sister had this problem all these years ago,
12 would you be able to be a fair and impartial
13 juror for me in this case?

14 PROSPECTIVE JUROR: I believe I
15 would.

16 Also I work at a health department
17 for thirty-five years. I used to file violation
18 charges in court and about a hundred and fifty
19 cases for health and sanitary codes. On two
20 instances I had to file felony charges against
21 people who sold medicine. I had worn a wire for
22 the District Attorney for investigating --

23 MR. KEAHON: I can't hear you.

24 PROSPECTIVE JUROR: Wiretap for the
25 District Attorney investigating bribery

1 Proceedings

2 corruption about thirty years ago, Town of
3 Babylon Building Department.

4 I currently, maybe once a year with
5 the police and F.B.I. and another -- people on
6 an anti-terrorism desk top task force. So I am
7 involved in other activities like that.

8 THE COURT: Do you feel you would be
9 able to put that aside and first not use any
10 expertise that you developed over the years and
11 just decide this case on the facts of this case
12 and the laws I instruct you on?

13 PROSPECTIVE JUROR: I feel I would.

14 MR. KEAHON: I had a question.

15 THE COURT: I just want to ask a
16 little preliminary questions. My apologies,
17 counsel.

18 Would you be able to give the Court
19 your word -- if you are not comfortable, that is
20 why we are discussing this privately. I don't
21 want to put anybody on the spot. That you would
22 not favor the prosecution or the defense as a
23 result of your background.

24 PROSPECTIVE JUROR: No. I believe I
25 would.

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THE COURT: That you would be fair to both sides?

PROSPECTIVE JUROR: Fair and just to both sides.

THE COURT: Mr. Keahon, you had a question?

MR. KEAHON: Yes.

Good afternoon, Mr. Farmer.

PROSPECTIVE JUROR: Good afternoon.

MR. KEAHON: You indicated that your sister is with the F.B.I.

PROSPECTIVE JUROR: Yes, sir.

MR. KEAHON: And another sister was a victim of a credit card fraud?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: When was that?

PROSPECTIVE JUROR: Early 90's, '91, '92.

MR. KEAHON: You indicated that you have worn a wire for the District Attorney's Office of Suffolk County.

PROSPECTIVE JUROR: Yes, sir.

MR. KEAHON: You can understand my concerns.

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PROSPECTIVE JUROR: Absolutely.

MR. KEAHON: Do you, sir, believe that a detective -- well, let me withdraw that.

You have heard about six detectives names read off to you as possible witnesses; did you know any of them?

PROSPECTIVE JUROR: No, sir.

MR. KEAHON: Do you believe that a detective could take the stand and swear to tell the truth and yet lie to you?

PROSPECTIVE JUROR: I believe anybody could, sir.

MR. KEAHON: Well, do you believe because of the work that you have done, your familiarity with the Court system, you lodging complaints yourself against people, you wearing a wire for the DA'S Office, your sister being an F.B.I. agent, do you think because of all of that and understandably, it might occur, that you would feel that law enforcement would be entitled to more of a, more credibility?

I mean, I only have a short time to speak with you.

PROSPECTIVE JUROR: I would tend to

1 Proceedings

2 believe them unless it was something other
3 than --

4 MR. KEAHON: So you would start
5 off -- and this is so important because I only
6 have a few minutes to talk to you to make a
7 decision.

8 PROSPECTIVE JUROR: Sure.

9 MR. KEAHON: It is your position
10 then, sir, because of all those things I
11 mentioned to you, that you would start off
12 believing what they had to say because of your
13 associations and your work environment and your
14 family structure in law enforcement? Is that a
15 fair statement?

16 PROSPECTIVE JUROR: That is a fair
17 statement.

18 MR. KEAHON: Do you think because of
19 it, your sister being a victim of a credit card
20 fraud and because of your association with law
21 enforcement, there might be another case that
22 you might be better suited to sit on than this
23 one?

24 PROSPECTIVE JUROR: I think I would
25 be unbiased in this one but there might be

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better cases.

MR. KEAHON: You would still, as you indicated, law enforcement might be entitled to a little bit more credibility starting off?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Okay. Thank you.

THE COURT: Mr. Pearl.

MR. PEARL: Mr. Farmer, is it anybody who comes into the courtroom who puts their hand up and swears to tell the truth that you would start believing what they said unless there was something that led you not to believe them?

PROSPECTIVE JUROR: Yes, correct.

MR. PEARL: Does that include law enforcement and civilian witnesses, the same?

PROSPECTIVE JUROR: I would think I would trust the law enforcement more than the civilian witness.

MR. PEARL: Could you be fair and impartial to both sides despite the fact there are law enforcements who will testify for the DA's Office?

PROSPECTIVE JUROR: I believe I would.

1 Proceedings

2 MR. PEARL: I believe and yes or no?

3 PROSPECTIVE JUROR: I believe I would
4 be, yes, sir.

5 MR. PEARL: Thank you.

6 THE COURT: Thank you.

7 Would you wait outside for just a
8 moment, please, wait with the officer.

9 PROSPECTIVE JUROR: (Complying.)

10 MR. KEAHON: Yes, I would challenge
11 for cause. Sister, F.B.I., he has worn a
12 wiretap for the DA's Office, brought charges
13 himself as a semi-prosecutor, has indicated to
14 the Court he would give law enforcement more
15 belief than any other witness.

16 I think under all those circumstances
17 that he should be challenged for cause.

18 THE COURT: Mr. Pearl.

19 MR. PEARL: My argument is, he says
20 he could be fair and impartial. His last answer
21 was yes, unequivocal. I think he is not a
22 cause.

23 THE COURT: We will seat him at this
24 time and at the conclusion of your respective
25 voir dire, I will reserve decision at this time.

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Proceedings

All right. You can tell Mr. Farmer he can take a seat with all the other potential jurors.

Off the record.

(Whereupon there was a discussion off the record.)

THE CLERK: This is the last one.

(Whereupon prospective juror entering.)

THE COURT: Mr. Vannostrand.

PROSPECTIVE JUROR: How are you doing?

THE COURT: Thank you so much for your patience.

Vannostrand, an old New York name.

PROSPECTIVE JUROR: Yeah, it goes back a long time.

THE COURT: Mr. Vannostrand, you had something you wished to discuss privately or yes?

PROSPECTIVE JUROR: It was with the police. My father was a police officer. I don't know if he was retired or present, and various friends that were on the police now that

1 Proceedings

2 I went to school with. It was nothing personal.

3 THE COURT: The reason -- and
4 anything else, yes answer?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Well, the reason that I
7 asked that question of people is because you
8 heard my follow-up that a police officer takes
9 the same oath as any other witness and because
10 of that, just by virtue of their occupation,
11 that they are not to receive any more
12 credibility or less credibility than any other
13 witness. That is the law.

14 So in other words they come in as any
15 other witness and you would have to view their
16 testimony and decide whether or not you believe
17 them and what weight to give their testimony.

18 Do you feel comfortable with this
19 instruction, with that instruction? You can
20 follow the law?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Anything else you would
23 like to discuss privately?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Then you can take your

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Proceedings

seat with the potential jurors. Thank you.

PROSPECTIVE JUROR: (Complying.)

MR. KEAHON: What was the juror that indicated that his brother's house was run into by the car?

THE COURT: Mr. Zakrewshi.

MR. KEAHON: Zakrewshi.

THE COURT: Zakrewshi.

THE CLERK: Zakrewshi.

MR. PEARL: Number six, right, Judge?

THE CLERK: Yeah.

THE COURT: Number six.

THE CLERK: Yes.

THE COURT: Okay.

I want to make sure. Do you have the list starting with number one, Miss Price, Miss Laguerre, Miss Roddy, Mr. Martino, Mr. Zakrewshi.

THE CLERK: No. Mr. Castro. Frederick Castro is number five.

And Mr. Zakrewshi.

THE COURT: Zakrewshi after him.

THE CLERK: Zakrewshi is six.

THE COURT: Five is?

1 Proceedings

2 THE CLERK: Castro.

3 Six is Zakrewshi.

4 THE CLERK: Then we have Stingley,
5 Roehrig.

6 THE COURT: Miss Roehrig.

7 THE CLERK: Yeah.

8 THE COURT: Farmer.

9 THE CLERK: Farmer.

10 Crawford, Desner, Calleja. And then
11 sixteen is Vannostrand, and seventeen, Moir.

12 THE COURT: Got you.

13 Okay. Lets go out, continue the
14 questioning.

15 (Whereupon the following occurred
16 back in the courtroom.)

17 THE COURT: Thank you all once again.

18 As I have said before, my function in
19 this trial is to explain the law to you and your
20 function will be to determine the facts and
21 apply the law to them, thereby rendering a fair
22 and just verdict.

23 In order to determine your
24 willingness to follow the law as I give it, I am
25 now obliged to question you about a few specific

1 Proceedings

2 principles of law.

3 A person accused of a crime is
4 presumed innocent. The People have the burden
5 of destroying their presumption by presenting
6 enough evidence to convince you, the jury, of
7 the defendant's guilt beyond a reasonable doubt.

8 The burden of proof remains on the
9 People throughout the trial and never shifts to
10 the defendant.

11 The defendant is not required to
12 prove or disprove anything.

13 Are any of you unable to accept this
14 principle and give the defendant the presumption
15 of innocence?

16 In my instructions at the end of this
17 trial I will explain the exact meaning of the
18 term beyond a reasonable doubt. For now,
19 however, I will just tell you that if after
20 considering the evidence and the lack of
21 evidence presented at the trial, you have a
22 reasonable doubt about the defendant's guilt,
23 you will be required to acquit this defendant.

24 Would any of you vote to convict even
25 if you had a reasonable doubt about the

1 Proceedings

2 defendant's guilt?

3 Conversely, would any of you require
4 absolute certainty of guilt before you would
5 convict?

6 Can all of you assure me that if you
7 find that the People have proved the defendant's
8 guilt beyond a reasonable doubt, you will return
9 a verdict of guilty as to this defendant?

10 Can you all promise me that?

11 If you can all indicate that with the
12 nod of the head and shake of the head.

13 And can you also assure me if the
14 People have not proven the defendant's guilt
15 beyond a reasonable doubt, you will return a
16 verdict of not guilty as to this defendant?

17 Can you promise me that as well?

18 Under our system of law no defendant
19 has a duty to testify or to call any witnesses
20 or to explain his actions in any way.

21 In this case the defendant might not
22 testify and indeed might not present any
23 evidence. You may not infer anything
24 unfavorable to the defendant from this fact.
25 That is an absolute law.

1 Proceedings

2 Do any of you think that a
3 defendant's decision not to testify would
4 influence you in your deliberations?

5 Your function as jurors is solely to
6 determine whether or not the People have proved
7 the defendant's guilt beyond a reasonable doubt.
8 The law does not permit you to consider the
9 possibility of punishment in your deliberations
10 and your verdict may not include any
11 recommendations as to sentence. Sentencing is
12 the exclusive function of the Court.

13 Do any of you feel you couldn't
14 render your verdict without considering the
15 possibility of punishment?

16 As jurors, although you do not have
17 to agree with or like the principles of law that
18 I explained, you must accept them and apply them
19 to the facts as you find those facts to be.

20 Do any of you feel that you will not
21 be able to accept and apply these principles?

22 Have any of you so far formed an
23 opinion or impression of the guilt or innocence
24 of the defendant?

25 I will now ask each one of you in the

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Proceedings

jury box a few questions individually. After which the People and defense counsel will ask you some questions as well. If you feel that any question which an attorney asks is too personal, you may say so. And if I feel the question is improper, you will not have to answer it. If you feel you want to answer any question privately, any question or any matter privately, please let me know, I will allow you to answer privately rather than in open court.

I remind you by your solemn oath, you must answer every question truthfully, as I know you will, unless I rule the question is not proper, and then I shall not let you answer it.

Beginning with you, Miss Price, what town do you live in, please?

PROSPECTIVE JUROR: I live in West Babylon.

THE COURT: And I apologize because some of these answers might have come up during some of our questioning inside but I am just writing them down separately. I apologize for any repetition.

Are you married?

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Proceedings

PROSPECTIVE JUROR: Yes.

THE COURT: Is your husband employed
outside the home?

PROSPECTIVE JUROR: Yes.

THE COURT: If I may, what does he
do?

PROSPECTIVE JUROR: He is in
collections.

THE COURT: And do you have any
children?

PROSPECTIVE JUROR: Yes.

THE COURT: Their ages, please.

PROSPECTIVE JUROR: Twenty-five and
twenty-one.

THE COURT: I think, memory serves
correct, you had a son-in-law, so one of them is
a daughter?

PROSPECTIVE JUROR: Yes, son is
twenty-five and daughter is twenty-one.

THE COURT: If I may ask, what do
they do?

PROSPECTIVE JUROR: My son, he is in
the city, financial, is a district manager. And
daughter's still in college.

1 Proceedings

2 THE COURT: What about yourself, are
3 you employed outside of the home right now?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: If I may ask, what do you
6 do?

7 PROSPECTIVE JUROR: Correction.

8 MR. KEAHON: I am sorry?

9 PROSPECTIVE JUROR: Correction.

10 THE COURT: And do you have any time
11 for any hobbies?

12 PROSPECTIVE JUROR: Oh, wow.

13 THE COURT: You don't have to list
14 all of them but your favorites.

15 PROSPECTIVE JUROR: I love to read
16 and listen to music.

17 THE COURT: And can you assure this
18 Court that you will be a fair and impartial
19 juror both for the People and for the defendant
20 in this case?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Thank you, Miss Price.

23 PROSPECTIVE JUROR: You're very
24 welcome.

25 THE COURT: Miss Laguerra.

Proceedings

PROSPECTIVE JUROR: Laguerra.

THE COURT: My apologies.

What town do you live in, please?

PROSPECTIVE JUROR: I live in

Shirley.

THE COURT: And are you married?

PROSPECTIVE JUROR: Yes, I am.

THE COURT: Is your husband employed
outside the home?

PROSPECTIVE JUROR: No, he is not.

THE COURT: And do you have any
children?

PROSPECTIVE JUROR: Yes.

THE COURT: And their ages, please.

PROSPECTIVE JUROR: One is forty-one,
and the other is thirty-eight.

THE COURT: And if I may ask, what do
they do?

PROSPECTIVE JUROR: They have roofing
businesses.

THE COURT: How about yourself, are
you employed outside the home right now?

PROSPECTIVE JUROR: No, I am not. My
husband and I are both retired.

1 Proceedings

2 THE COURT: If I may ask, before you
3 were retired?

4 PROSPECTIVE JUROR: Oh, I worked,
5 yes. I worked at the Longwood High School as a
6 secretary.

7 THE COURT: Do you have any hobbies?

8 PROSPECTIVE JUROR: Uh-- with my
9 grandchildren, I do a lot of baby-sitting.

10 THE COURT: I am sure your children
11 appreciate that hobby.

12 Can you assure this Court you will be
13 a fair and impartial juror both for the People
14 and the defendant in this case?

15 PROSPECTIVE JUROR: Yes, I will.

16 THE COURT: Thank you very much.

17 What town do you live in, Miss Roddy?

18 PROSPECTIVE JUROR: Shirley.

19 THE COURT: And are you married?

20 PROSPECTIVE JUROR: Two months now.

21 MR. KEAHON: I am sorry, I didn't
22 hear that.

23 PROSPECTIVE JUROR: Two months now.

24 THE COURT: Oh, congratulations.

25 PROSPECTIVE JUROR: It is the second

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Proceedings

one.

THE COURT: And is your husband
employed outside the home?

PROSPECTIVE JUROR: Yeah.

THE COURT: And what does he do, if I
may ask?

PROSPECTIVE JUROR: Security in the
city.

THE COURT: Do you have any children?

PROSPECTIVE JUROR: Two daughters.

THE COURT: And their ages, please.

PROSPECTIVE JUROR: Twenty-nine and
thirty-one.

THE COURT: If I may ask, what do
they do?

PROSPECTIVE JUROR: One's a teacher
and one's an administrative assistant in a
health care facility.

THE COURT: What about yourself, are
you employed outside the home right now?

PROSPECTIVE JUROR: Yeah. I work for
Keyspan, I am a meter reader and audit person.

THE COURT: Do you have any hobbies?

PROSPECTIVE JUROR: I do crafts.

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Proceedings

THE COURT: And can you assure this Court that you will be a fair and impartial juror both for the People and the defendant in this case?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you.

Mr. Martino.

PROSPECTIVE JUROR: Yes.

THE COURT: What town do you live in, sir?

PROSPECTIVE JUROR: Yaphank.

THE COURT: And are you married, sir?

PROSPECTIVE JUROR: No, sir.

THE COURT: Any children?

PROSPECTIVE JUROR: No.

THE COURT: Are you employed outside the home?

PROSPECTIVE JUROR: Yes.

THE COURT: If I may ask, what do you do, sir?

PROSPECTIVE JUROR: I am an environmental technician.

THE COURT: Do you have any hobbies?

PROSPECTIVE JUROR: Yes. I like back

1 Proceedings

2 packing and photography.

3 THE COURT: Can you assure this Court
4 that you will be a fair and impartial juror both
5 for the People and for the defendant in this
6 case?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Thank you.

9 Mr. Castro, what town do you live in,
10 sir?

11 PROSPECTIVE JUROR: Central Islip.

12 THE COURT: And are you married, sir?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Is your wife employed
15 outside the home?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Any children?

18 PROSPECTIVE JUROR: Four.

19 THE COURT: Their ages, please.

20 PROSPECTIVE JUROR: Forty-one,
21 thirty-six, thirty-five, twenty-nine.

22 THE COURT: And if I may ask, what do
23 they do?

24 PROSPECTIVE JUROR: Um, my two sons
25 work the heating/air conditioning business. My

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Proceedings

middle son works as a coordinator for a leather goods company, and my daughter works for CPA.

THE COURT: And I believe you had indicated you are a teacher?

PROSPECTIVE JUROR: Yes, Western Suffolk BOCES.

THE COURT: Do you have any hobbies?

PROSPECTIVE JUROR: Golf.

THE COURT: Can you assure this Court that you will be a fair and impartial juror both for the People and for the defendant in this case?

PROSPECTIVE JUROR: Absolutely.

THE COURT: Thank you Mr. Castro. Mr. Zakrewshi.

PROSPECTIVE JUROR: Close enough.

THE COURT: I am sorry. How do you pronounce it?

PROSPECTIVE JUROR: Zakrewshi.

THE COURT: Mr. Zakrewshi, what town do you live in, please?

PROSPECTIVE JUROR: Babylon Village.

THE COURT: Are you married, sir?

PROSPECTIVE JUROR: Yes.

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THE COURT: Is your wife employed
outside the home?

PROSPECTIVE JUROR: Yes. She works at
the Saint Joseph's Church as an administrative
assistant.

THE COURT: Do you have any children,
sir?

PROSPECTIVE JUROR: Two; fifteen year
old daughter, twelve year old son, both
students.

THE COURT: How about yourself, sir,
I believe you have indicated that you are an
engineer.

PROSPECTIVE JUROR: Yeah. I lead an
engineering group for Honeywell.

THE COURT: Do you have any hobbies?

PROSPECTIVE JUROR: Wood working,
cabinet making.

THE COURT: Can you assure this Court
that you will be a fair and impartial juror both
for the People and for the defendant in this
case?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you.

1 Proceedings

2 Mr. Stingley, what town do you live
3 in, sir?

4 PROSPECTIVE JUROR: Melville.

5 THE COURT: Are you married, sir?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Is your wife employed
8 outside the home?

9 PROSPECTIVE JUROR: She is retired.

10 THE COURT: If I may ask, before she
11 was retired?

12 PROSPECTIVE JUROR: She was an
13 executive with Chemical Bank.

14 THE COURT: Do you have any children,
15 sir?

16 PROSPECTIVE JUROR: I have two, and
17 my stepson also through a second marriage.

18 THE COURT: Their age?

19 PROSPECTIVE JUROR: Forty-one, forty
20 and thirty-seven.

21 THE COURT: If I may ask, what do
22 they do, sir?

23 PROSPECTIVE JUROR: I don't know
24 what my children do, we have been estranged for
25 twenty plus years. My stepson is an executive

1 Proceedings

2 with Hughes Supply in Orlando, Florida.

3 THE COURT: How about you, are you
4 employed outside the home?

5 PROSPECTIVE JUROR: Yes, I work for
6 Cable Vision.

7 THE COURT: Do you have any hobbies?

8 PROSPECTIVE JUROR: Competitive
9 tournament bridge, and reading.

10 THE COURT: Can you assure this Court
11 that you will be a fair and impartial juror both
12 for the People and for the defendant in this
13 case?

14 PROSPECTIVE JUROR: Yes, I shall.

15 THE COURT: Thank you.

16 Miss Roehrig.

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: What town do you live in,
19 please?

20 PROSPECTIVE JUROR: I live in
21 Riverhead.

22 THE COURT: And are you married?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Is your husband employed
25 outside the home?

1 Proceedings

2 PROSPECTIVE JUROR: Yes, he is.

3 THE COURT: If I may ask?

4 PROSPECTIVE JUROR: He is a sales
5 representative for windows, custom doors, that
6 type of thing.

7 THE COURT: And do you have any
8 children?

9 PROSPECTIVE JUROR: I have three.

10 THE COURT: And their ages, please?

11 PROSPECTIVE JUROR: The oldest is
12 twenty-one, and she is employed as a staff
13 reporter for a local newspaper in Nebraska. And
14 the other two are eighteen and seventeen, and
15 one's in college, first year of college, the
16 other one's in high school.

17 THE COURT: How about yourself, are
18 you employed outside the home?

19 PROSPECTIVE JUROR: Yes, I am.

20 THE COURT: What do you do?

21 PROSPECTIVE JUROR: I am a director of
22 a Lutheran School.

23 THE COURT: Do you have any hobbies?

24 PROSPECTIVE JUROR: I like to read
25 and I volunteer at the church.

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Proceedings

THE COURT: Can you assure this Court that you will be a fair and impartial juror both for the People and for the defendant in this case?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you.

Mr. Farmer, what town do you live in, sir?

PROSPECTIVE JUROR: Stony Brook.

THE COURT: Are you married, sir?

PROSPECTIVE JUROR: No.

THE COURT: Any children?

PROSPECTIVE JUROR: No.

THE COURT: Are you employed outside the home right now?

PROSPECTIVE JUROR: Yes.

THE COURT: If I may ask, what do you do?

PROSPECTIVE JUROR: Suffolk County Department of Health Services.

THE COURT: And do you have any hobbies?

PROSPECTIVE JUROR: Reading.

THE COURT: Can you assure this Court

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Proceedings

that you will be a fair and impartial juror both
for the People and for the defendant in this
case?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you, sir.

Miss Crawford, if I may ask, what
town do you live in, please.

PROSPECTIVE JUROR: Centerport.

THE COURT: Are you married?

PROSPECTIVE JUROR: Yes.

THE COURT: Is your husband employed
outside the home?

PROSPECTIVE JUROR: Yes.

THE COURT: If I may ask?

PROSPECTIVE JUROR: New York Times
part-time writer.

THE COURT: Do you have any children?

PROSPECTIVE JUROR: Two boys; four
and seven.

THE COURT: How about yourself, are
you employed outside the home right now?

PROSPECTIVE JUROR: Yes.

THE COURT: If I may ask, what do you
do?

1 Proceedings

2 PROSPECTIVE JUROR: Teach.

3 MR. KEAHON: I am sorry?

4 PROSPECTIVE JUROR: Teacher.

5 THE COURT: You are very modest.

6 With a four and seven year old, do
7 you have any time for hobbies?

8 PROSPECTIVE JUROR: Um -- not much.
9 But I like to read once they're in bed.

10 THE COURT: Can you assure this Court
11 that you will be a fair and impartial juror both
12 for the People and defendant in this case?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Thank you, Miss Crawford.
15 Miss Desner, what town do you live
16 in, please?

17 PROSPECTIVE JUROR: Huntington
18 Station.

19 THE COURT: Are you married?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Is your husband employed
22 outside the home?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: If I may ask, what does
25 he do?

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Proceedings

PROSPECTIVE JUROR: Chemical
engineer.

THE COURT: And do you have any
children?

PROSPECTIVE JUROR: Yes, three.

THE COURT: Their ages?

PROSPECTIVE JUROR: Two boys and a
daughter; thirty-three, thirty-four and
thirty-eight.

THE COURT: If I may ask, what do
they do?

PROSPECTIVE JUROR: My youngest is a
teacher in Binghamton, and my middle child is a
landscaper/designer and um-- does um-- pool
supplies and sells pool supplies. And then the
oldest is a daughter that is home now, presently
a homemaker with two children.

THE COURT: What about yourself, are
you employed outside the home right now?

PROSPECTIVE JUROR: No, retired.

THE COURT: If I may ask, before you
were retired?

PROSPECTIVE JUROR: Office manager.

THE COURT: Do you have any hobbies?

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PROSPECTIVE JUROR: Tennis, golf, swimming. I go to the gym. And I play with my -- I jog with my dog.

THE COURT: That is a race I would lose with my dog.

And can you assure this Court that you would be a fair and impartial juror both for the defendant and the People in this case?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you.

Mr. Calleja, what town do you live in, sir?

PROSPECTIVE JUROR: Selden.

THE COURT: Are you married, sir?

PROSPECTIVE JUROR: Yes.

THE COURT: And is your spouse employed outside the home?

PROSPECTIVE JUROR: No.

THE COURT: Do you have any children?

PROSPECTIVE JUROR: Four.

THE COURT: And their ages, please.

PROSPECTIVE JUROR: Twenty-three, twenty-one, eighteen and fifteen.

THE COURT: And the older ones, are

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Proceedings

they still in school?

PROSPECTIVE JUROR: No. My oldest is an BMB technician, and my other daughter is a Phlebotomist. The other two are in school.

THE COURT: How about yourself, are you employed outside of the home?

PROSPECTIVE JUROR: Yes. I work for National Grid. I am a line man.

MR. KEAHON: I am sorry?

I am sorry?

PROSPECTIVE JUROR: I am a line man.

THE COURT: Do you have any hobbies?

PROSPECTIVE JUROR: Camping and motorcycle riding.

THE COURT: Can you assure this Court that you will be a fair and impartial juror both for the defendant and for the People in this case?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you.

Mr. Vannostrand, what town do you live in, sir?

PROSPECTIVE JUROR: Islip Terrace.

THE COURT: Are you married, sir?

1 Proceedings

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Is your wife employed
4 outside of the home?

5 PROSPECTIVE JUROR: Yes. She is a
6 pharmacist.

7 THE COURT: And do you have any
8 children?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Are you employed outside
11 the home?

12 PROSPECTIVE JUROR: Yes. I am an
13 auditor.

14 MR. KEAHON: I am sorry?

15 PROSPECTIVE JUROR: Auditor.

16 THE COURT: Do you have any hobbies?

17 PROSPECTIVE JUROR: Hiking, biking.

18 THE COURT: Can you assure this Court
19 that you will be a fair and impartial juror both
20 for the defendant and for the People in this
21 case?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Thank you.

24 And Mr. Moir, what town do you live
25 in, sir?

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PROSPECTIVE JUROR: Shirley.

THE COURT: And are you married, sir?

PROSPECTIVE JUROR: Yes. My wife is
in sales for Star Publications.

THE COURT: And any children, sir?

PROSPECTIVE JUROR: Yeah, two. My
daughter's twenty-seven, she works at a radio
station and my son's a college student, he is
twenty-three.

THE COURT: And how about yourself,
are you employed outside the home right now?

PROSPECTIVE JUROR: Yes. I drive a
truck for a magazine distributor.

THE COURT: How about any hobbies?

PROSPECTIVE JUROR: Yeah. I like to
ski, mountain bike.

THE COURT: Can you assure this Court
that you will be a fair and impartial juror both
for the defendant and the People in the case?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you.

Thank you all.

At this time the People may inquire
of the prospective jury.

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Proceedings

MR. PEARL: Thank you.

THE COURT: You have thirty minutes.

MR. PEARL: Thank you, Your Honor.

I will set up.

Good afternoon, ladies and gentlemen.

My name is Raphael Pearl, I am an Assistant District Attorney assigned to the Economic Crimes Bureau of the Suffolk County District Attorney's Office. This is my co-counsel, Jodi Franzese.

MS. FRANZESE: Good afternoon, everyone.

MR. PEARL: She is also an Assistant District Attorney assigned to the same unit as me, and we have been appointed by the District Attorney, your District Attorney, Suffolk County, Thomas Spota, to prosecute this case, as the Judge has told you, the People of the State of New York against this defendant, Lamar Whitehead. And throughout the course of the trial you might hear me refer to him as Lamar, Lamor.

As the Judge has already told you, this is voir dire, it is not a point of the case

Proceedings

1 where I am going to go into any of the real
2 underlying facts, but just basically, as you
3 have heard, the indictment charges one count of
4 Scheme to Defraud in the First Degree, one count
5 of Attempted Grand Larceny, Second Degree, and
6 then there are thirty-two counts of Identity
7 Theft, most of them First Degree. There are a
8 few Identity Thefts, Third Degree. And it seems
9 like maybe on the face of it, it is going to be
10 a complicated trial. And I can tell you it is a
11 lot of potential witnesses that are going to be
12 called, Jodi and I to present the matter in a
13 certain manner, the law, to bring in thirty to
14 thirty-five witnesses in this trial so you can
15 hear the evidence and make a decision on the
16 evidence. But basically it is simple.

18 It is alleged the defendant took
19 seventeen Suffolk County residents personal
20 identifying information. Basically that means
21 either your name or your Social Security Number
22 and then use that information to go steal, to
23 commit another crime, attempted or commit it or
24 attempted to commit a Class D Felony or higher.
25 In this case it is always Grand Larceny. It is

1 Proceedings

2 always stealing something in excess of three
3 thousand dollars.

4 So basically it is a really simple
5 case. When you really boil it down, using a
6 person's identifying information, Suffolk County
7 residents, defendant attempted, trying to steal.

8 Just using those facts, is there
9 anyone that thinks they can not be fair and
10 impartial?

11 Anybody?

12 No show of hands.

13 Miss Price, right?

14 PROSPECTIVE JUROR: Yes.

15 MR. PEARL: Can you be fair and
16 impartial?

17 PROSPECTIVE JUROR: Can I be fair and
18 impartial? Yes.

19 MR. PEARL: Listen to those basic
20 facts.

21 Now the Judge told you, my burden is
22 beyond a reasonable doubt. It never goes
23 higher.

24 Can you promise me, to hold me to
25 that burden, nothing higher, beyond a reasonable

Proceedings

doubt?

PROSPECTIVE JUROR: Yes.

MR. PEARL: And Miss -- if I butcher anybody's name, I apologize.

Miss Laguerra.

You will not hold me to a higher burden, beyond all doubt, beyond a shadow of a doubt? Because if it was beyond all doubt, the District Attorney's Office in essence couldn't do a trial. Nothing is beyond all doubt.

Do you agree with me?

PROSPECTIVE JUROR: Yes.

MR. PEARL: You agree to hold me to the burden of beyond a reasonable doubt?

PROSPECTIVE JUROR: Yes.

MR. PEARL: Now the Judge also has mentioned, I believe he may mention in one of his charges, that the People's burden is to prove the defendant's guilt beyond a reasonable doubt but it is to prove the elements of the crime charged and that is different than proving every fact that may be presented in the case.

Miss Roddy, for example, the Judge will tell you what -- lets go back. Identity

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2 theft, there are elements that make up the crime
3 of identity of Suffolk County residents, using a
4 person's identifying name, stole something in
5 excess of three thousand dollars.

6 So you have, give or take, four
7 elements. There is nothing in the law that
8 requires the District Attorney's Office, Jodi or
9 myself to prove how, how the defendant was able
10 to get seventeen Suffolk County resident's
11 personal identifying information.

12 If that is not an element, are you
13 going to hold me to a burden of proving how this
14 defendant got every single persons identifying
15 information?

16 PROSPECTIVE JUROR: No.

17 MR. PEARL: Mr. Martino, is that
18 something you would want to know, perhaps how
19 the defendant got these people's information?

20 PROSPECTIVE JUROR: No.

21 MR. PEARL: Not at all? You wouldn't
22 be curious about it?

23 PROSPECTIVE JUROR: No.

24 MR. PEARL: If it is not an element,
25 you wouldn't make me prove this, though?

1 Proceedings

2 PROSPECTIVE JUROR: No.

3 MR. PEARL: If I prove just the
4 elements that the defendant used those
5 identities and committed the crime of theft,
6 would you beyond a reasonable doubt be able to
7 convict him of guilty of the crime of identity?

8 PROSPECTIVE JUROR: Yes.

9 MR. PEARL: Now as I said, it is
10 going to be potentially, potentially a long
11 trial. I have to tell you right up, there are
12 potentially fifty to fifty-five witnesses that I
13 have to call in order to present evidence. And
14 we could be going until March 20th, which you
15 can tell everybody you will be on trial to the
16 first day of Spring because that is the first
17 day of Spring.

18 Is there anybody who doesn't want to
19 be on trial till Spring?

20 When you say it like that, it seems a
21 lot longer.

22 Anybody doesn't want to be on trial?

23 Everybody's okay with a four to six
24 week trial?

25 PROSPECTIVE JUROR: How about going

1 Proceedings

2 after? The week after I am booked on a flight
3 down to Florida. I have hotels and everything
4 on the twenty-eighth.

5 MR. PEARL: Well, I am really hoping
6 we will be done by March 20th.

7 THE COURT: We have attempted to
8 actually build in a margin of error. We are
9 hoping the trial will end much earlier but that
10 is the outside number, because of that concern
11 regarding your own personal lives.

12 Please continue.

13 MR. PEARL: But assuming we are done
14 before the vacation, by March 20th, you are okay
15 with serving till Spring?

16 PROSPECTIVE JUROR: Yes.

17 MR. PEARL: It has a little different
18 ring when you hear Spring.

19 Mr. Calleja, right?

20 PROSPECTIVE JUROR: Right.

21 MR. PEARL: You are going to the game
22 on the third?

23 PROSPECTIVE JUROR: Yes.

24 MR. PEARL: Are you a Ranger fan or
25 an Islander fan?

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(Whereupon prospective juror showing jacket.)

MR. PEARL: If I went to your house during, for that game, what would you have in your house for the Rangers?

PROSPECTIVE JUROR: I would have my jersey on, I would have my TV going with the surround sound, and listening to every shot of the game. I am not totally crazy about, my father was, my brother was, you know, always been a Ranger tradition.

MR. PEARL: So if I came to your house on March 3rd and to watch the game in your house --

PROSPECTIVE JUROR: I would be at the Coliseum.

MR. PEARL: If you weren't at the Coliseum and I walk into your house and see the TV on, the Rangers, I see you with your jersey on, you have four kids, right, older, but they are wearing Ranger jerseys?

PROSPECTIVE JUROR: Well, some are Islanders. We are a divided family.

MR. PEARL: Is it fair though, that

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somebody walking into your house and seeing
3 that, knowing very little, I have never met you
4 before, I can infer that you are a diehard
5 Ranger man, right?

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PROSPECTIVE JUROR: Yes.

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MR. PEARL: You don't have to tell me
that you are a diehard Ranger fan. When I
walked in, I can probably infer that.

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Is it fair that from things around
you, from facts that are out there, that you can
infer facts, you don't have to tell me that you
are a Ranger fan. If I walk into your house and
see there are Ranger jerseys and the game on and
and talking, and I see everything in your house,
I can infer you are a Ranger fan.

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PROSPECTIVE JUROR: Right.

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MR. PEARL: If you came to my house
you might see the opposite, Islanders or Giants,
you can infer from the facts around, you don't
have to be told.

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In this case, well, let me put it
like this, Mr. --

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PROSPECTIVE JUROR: Stingley.

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MR. PEARL: Stingley. Two questions.

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Number one, you work for Cable Vision. Do you know a Sam Valentine?

PROSPECTIVE JUROR: No.

MR. PEARL: There might be a witness who testifies from Cable Vision here, put in certain IP information.

Do you know what IP is?

Anybody have a computer?

Okay. How many people have -- how many people are hooked to the Internet in your house?

Okay. So everybody.

Miss Price, how are you hooked up into the Internet?

PROSPECTIVE JUROR: Optimum On-line.

MR. PEARL: Are you through a modem or wireless?

PROSPECTIVE JUROR: Modem.

MR. PEARL: Anybody have WiFi?

Anybody know what WiFi is?

Mr. Zakrewshi.

PROSPECTIVE JUROR: It is wireless connection, 2,000 GHZ, whatever.

MR. PEARL: You know a lot more than

Proceedings

1 I do.

2 And are you password protected?

3 PROSPECTIVE JUROR: Yes, and
4 equipment.

5 MR. PEARL: So you know about the
6 security code?

7 PROSPECTIVE JUROR: Yeah.

8 MR. PEARL: Anybody have like an
9 I-Touch or an I-Phone or something?

10 Anybody ever drive around and hit
11 somebody's wireless?

12 PROSPECTIVE JUROR: Yes.

13 MR. PEARL: What happens when you
14 drive around the neighborhood and hit somebody's
15 wireless Internet?

16 PROSPECTIVE JUROR: If it is not
17 secured you can get right on everything.

18 MR. PEARL: And how many people, how
19 many times have you hit? All the time?

20 PROSPECTIVE JUROR: It is
21 embarrassing. It is probably ninety percent of
22 the people don't pass.

23 MR. PEARL: I have the greatest gift,
24 my wife got me an I-Touch. I never had anything
25

1 Proceedings

2 that had WiFi. Everywhere I go I hit people's
3 wireless Internet and I am on somebody else's
4 Internet, not because I am choosing to do it,
5 because my little I-Touch will pick it up.

6 So do you know what a Cookie is? In
7 referring to what is a Cookie?

8 PROSPECTIVE JUROR: It is a little
9 piece of configuration data that is left behind
10 that will -- could be used for a few things to
11 store your configuration at a website that you
12 went to or maybe carry some information. Like
13 if you bought something on line, it may actually
14 hold your credit card information and everything
15 on it.

16 MR. PEARL: How many people have gone
17 to -- I am going to use what Mr. Zakrewshi just
18 said. How many people, say -- Miss Druna.

19 PROSPECTIVE JUROR: Desner.

20 MR. PEARL: Desner.

21 PROSPECTIVE JUROR: Leona Desner.

22 MR. PEARL: I can't read my own
23 handwriting. I am sorry.

24 Did you indicate you had a computer?

25 PROSPECTIVE JUROR: I don't have a

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computer.

MR. PEARL: You don't go on the Internet?

PROSPECTIVE JUROR: That is why I don't do it. I hear too many horror stories.

MR. PEARL: It is hard. Not even my mom who is seventy.

But you are right, the world has changed. Right? Everybody is now doing stuff through the Internet? Right? Banking. Everything.

Miss Crawford, you have a computer, right?

PROSPECTIVE JUROR: Yes.

MR. PEARL: Did you ever go on Ebay, Amazon, any of those websites?

PROSPECTIVE JUROR: Yes.

MR. PEARL: Did you ever go through it, says hello, Miss Crawford, welcome back?

PROSPECTIVE JUROR: Yes.

MR. PEARL: Did you ever wonder how that happens?

PROSPECTIVE JUROR: But it doesn't happen until I put in my password.

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MR. PEARL: Right. You go into the website, says hello, happy to see you, whatever your nickname is.

Did you ever wonder why it does that, hello?

PROSPECTIVE JUROR: No.

MR. PEARL: How does your computer know you? How does Ebay know you're back on that web page?

PROSPECTIVE JUROR: Because I signed in.

MR. PEARL: Also -- but can you answer that question?

PROSPECTIVE JUROR: Sure. It is the information stored in a Cookie that says when I type in this password this is my data, gets uploaded.

MR. PEARL: So Ebay has logged in a Cookie on your computer and that Cookie now goes back. So when you go on, that Cookie now says welcome back Miss Crawford, it is good to see you, and that Cookie is that, if you will.

MR. KEAHON: Judge, could we approach, please.

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THE COURT: Yes. If I can see
counsel side-bar over here.

(Whereupon the following occurred at
side-bar.)

THE COURT: Okay. How can I help
you, Mr. Keahon?

MR. KEAHON: Judge, this is not a
jury selection, this is the use of their
testimony in their case to put to the jurors and
have them answer back. He has not asked one
question that has anything to do with jury
selection in their ability to sit as fair and
impartial jurors in this case.

THE COURT: Mr. Pearl.

MR. PEARL: Judge, I am just -- my
case is going to require some information that
is going to require my people to have some
technological information. I am just trying to
ascertain whether or not they know about
computers, if they can understand the testimony.

THE COURT: Do you wish to be heard
further?

MR. KEAHON: No.

THE COURT: The objection will be

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overruled at this time. Exception noted.

However, I caution you, I caution you, Mr. Pearl, some of what you are saying to the jury, it must be couched in terms of questions. You are making statements. You must not testify and appear as stating any factor to them.

MR. PEARL: Thank you.

(Whereupon the following took place back in open court.)

THE COURT: Thank you.

Mr. Pearl, you may continue your inquiry.

MR. PEARL: So where did I leave off.

Mr. Castro, what do you think some of the negative effects of having your identity stolen could be?

MR. KEAHON: I am going to object, Judge.

THE COURT: Overruled.

MR. KEAHON: I object.

THE COURT: Overruled.

Over your exception.

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MR. PEARL: Generally speaking.

PROSPECTIVE JUROR: I mean, it certainly can impact your financial status, one I would think of right off the top.

MR. PEARL: In a case where, well, generally speaking, when is the last time -- I will ask you, when is the last time somebody here has given out their personal identifying information to somebody for any reason?

Anybody want to volunteer?

PROSPECTIVE JUROR: When we came here we had to do it.

MR. PEARL: I know that because my wife had to do jury service last week. You had to fill out a juror card, put your Social Security Number on it and give it to, I guess, one of the Commissioner of Jurors downstairs.

Do you know anything about the person that you gave that to?

PROSPECTIVE JUROR: No.

MR. PEARL: Do you know what type of information is stored on that number?

PROSPECTIVE JUROR: Everything. Your life.

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MR. PEARL: Your entire life. They have access to everything.

What if -- and Mr. Vannostrand.

PROSPECTIVE JUROR: Yes.

MR. PEARL: What if the person that you gave your Social Security Number to wasn't trustworthy? What could happen to you? Did you ever think about that?

PROSPECTIVE JUROR: Yeah.

MR. PEARL: And how long do you think it would take you to find out if your identity had been stolen?

MR. KEAHON: Judge, I am going to object. This has nothing to do with jury selection.

THE COURT: It is relevant, counsel. Your objection will be overruled. Note your exception.

MR. PEARL: How long do you think it may take?

PROSPECTIVE JUROR: Um-- probably quick, I would think, if somebody really wants something to do with my Social Security Number.

MR. PEARL: Do you monitor your

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Social Security Number?

Does anybody subscribe to Life Lock?

PROSPECTIVE JUROR: I tried a privacy card but it was a disaster, they didn't know anything when I registered for a new car. I bought a new car, they didn't tell me I was supposed to tell them daily. It took months. Said everything is hunky-dory, no changes in your credit, and things were going on. I was so annoyed, I dropped it. I was paying a hundred and nineteen dollars a month.

MR. PEARL: A month.

Miss Roddy.

PROSPECTIVE JUROR: Not Life Lock.

MR. PEARL: You did it through the credit card?

PROSPECTIVE JUROR: Uh-huh.

MR. PEARL: If you didn't catch it quickly -- well, withdrawn.

Can you see how-- well, let me give you an example, give you a comparison.

Mr. Moir, lets take one example where a person comes up to you and they assault you, they smack you in the head, they have a gun,

1 Proceedings

2 they rob you.

3 Now lets put you on the other side.
4 You give your Social Security Number to the
5 Commissioner of Jurors downstairs. Three months
6 from now you find out somebody took out a credit
7 card in your name and charged up five thousand
8 dollars.

9 MR. KEAHON: I object.

10 THE COURT: Side-bar, please.

11 (Whereupon the following occurred at
12 side-bar.)

13 THE COURT: Mr. Pearl, to analogize
14 the matter before the Court and to insert a
15 comparison with an armed robbery, the question
16 even bleakly is improper.

17 MR. PEARL: I am not doing it for
18 that. I am doing it for the purpose of direct
19 ID and circumstantial ID, has the exact -- I am
20 not--

21 THE COURT: No, no, don't mention
22 violent crimes in the connection of your voir
23 dire because it has -- these are lay people and
24 the mentioning of crimes like that may get them
25 to start doing comparisons, and that would be

Proceedings

improper. So you have to keep away from that.

MR. KEAHON: Judge, I am moving for a mistrial at this point. There is not one thing that has been done in this jury selection has been a proper jury selection. All he is doing is trying to make his case with his facts and evidence and getting the jury to comment on it. Case law tells us you are not permitted to do that. And he is forcing me to object nonstop and I am moving for a mistrial because everything that is being done now is totally improper.

THE COURT: I will hear the People.

MR. PEARL: Judge, I oppose that and I object to that. That is not what I am doing. I am trying to bring up the issues. And this specific issue is going to be about no direct evidence.

I will indicate there is not going to be any direct ID. If the Court rather me do it that way.

THE COURT: First, in order, sustain the objection to the original question.

As far as the motion for a mistrial,

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2 it will be denied.

3 The subject matter, if couched
4 correctly does -- is, excuse me, a relevant area
5 because the potential juror's feelings on the
6 question of identity theft on computer crime
7 have a bearing on whether or not they can be
8 fair jurors to your client.

9 So questions designed to elicit their
10 feelings as far as both their technology
11 expertise because that can be inserted in this
12 case, required admonition or your own
13 questioning or their exclusion as jurors or
14 their, also their feelings, their passions, if
15 you will, regarding this type of activity is
16 clearly relevant.

17 So I will allow the inquiry but your
18 questions however, must not belittle an innuendo
19 or state fact. If you continue, I don't want to
20 have to curtail your voir dire but if there is
21 another question as to improper form, I will
22 stop your voir dire at this point in time.

23 MR. PEARL: I will ask directly.

24 MR. KEAHON: He has got nine minutes.

25 THE COURT: We stop the clock when it

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comes here.

(Whereupon the following took place
back in open court.)

THE COURT: Thank you.

Mr. Pearl, you may continue your
inquiry.

MR. PEARL: Mr. Moir, with identity
theft there is no -- really do you get a case
where there is direct ID, somebody will be
actually -- can't point out that guy did it.

If you have to rely on in essence,
circumstantial evidence of other things to end
up pointing the finger at who did it, would that
cause you difficulty in ultimately coming to a
verdict?

PROSPECTIVE JUROR: No.

MR. PEARL: Do you think that without
a witness who is an eye witness to a crime, that
the people can proof their case?

PROSPECTIVE JUROR: No.

MR. PEARL: Mr. Farmer, how do you
feel about that same issue, the fact that the
District Attorney's Office, Jodi and I are going
to have to rely on evidence other than, at least

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2 with identification, direct ID, identify theft
3 usually doesn't have, you don't know who
4 sometimes steals your identity.

5 If you have to rely on circumstantial
6 things other than somebody coming in directly
7 saying that person stole my ID, is that going to
8 cause difficulties for you at trial and maybe
9 you not fair and impartial to the People?

10 PROSPECTIVE JUROR: No.

11 MR. PEARL: Miss Roehrig, how do you
12 feel about that issue?

13 PROSPECTIVE JUROR: I have no problem
14 with that.

15 MR. PEARL: If you woke up tomorrow
16 morning and went to the window and it is gray
17 outside and then you go out and see there is
18 water on the street, you see the car covered
19 with water, I assume your sprinklers aren't on,
20 what conclusion would you come to?

21 PROSPECTIVE JUROR: That it had
22 rained out.

23 MR. PEARL: Do you need to see it
24 actively rain to know that?

25 PROSPECTIVE JUROR: No.

1 Proceedings

2 MR. PEARL: Do you see how that is?
3 You made a conclusion based on circumstantial
4 evidence, you see things.

5 PROSPECTIVE JUROR: Yes.

6 MR. PEARL: Mr. Stingley, do you
7 agree you can come to a conclusion about it
8 without somebody telling you it was raining?

9 PROSPECTIVE JUROR: Under the example
10 you gave, yes.

11 MR. PEARL: And similar to my Ranger
12 fan here, how you can walk into his house on the
13 big game, Rangers against the Islanders, you can
14 probably see he is a Ranger fan and not an
15 Islander fan.

16 What are some of the things,
17 circumstances that you think you would look for
18 in order to help you come to a conclusion?

19 PROSPECTIVE JUROR: In what context,
20 in the case of identity theft or using your
21 example of raining? I think you gave the
22 perfect one.

23 MR. PEARL: With identity.

24 PROSPECTIVE JUROR: I guess I would
25 have to see reasonable evidence and proof if

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they had anything stolen.

MR. PEARL: Would you want to know how the actual theft crime occurred, not the identity theft part of it?

PROSPECTIVE JUROR: You mean how they managed to do this?

MR. PEARL: Correct.

It might be two part. It might be somebody taking identity and somebody committing the theft part of the crime, going out and stealing.

Would you want to know how they stole? Would that be something important for you?

PROSPECTIVE JUROR: I guess under the context you put it, it would not be necessary but it would certainly lend credibility to the fact that such a thing had taken place.

MR. PEARL: Miss Roddy, did I ask you any questions?

PROSPECTIVE JUROR: Uh-huh.

MR. PEARL: If a phone was used to facilitate a crime like identity theft, however, that phone maybe was actually a stolen phone,

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2 can you see how there can be levels of issues
3 involved with trying to find or with identity
4 issues, identity theft case. Is that-- would
5 something without a direct ID witness coming in
6 to trial, saying this person stole my card and
7 did this, would that be a problem for you in
8 coming to a verdict?

9 PROSPECTIVE JUROR: No.

10 Unless there was other evidence to
11 prove that.

12 MR. PEARL: So you can see how a
13 direct-- there would be issues maybe with a
14 direct ID coming out, somebody pointing out this
15 person.

16 PROSPECTIVE JUROR: Right.

17 MR. PEARL: Now Mr. Martino, in this
18 case we may, and it is very likely we may have a
19 codefendant, a person who has already pled
20 guilty to the crime of identity theft, has been
21 promised by the District Attorney, you know,
22 less time or no time if you come to court and
23 testify truthfully. Do you have a problem
24 with --

25 MR. KEAHON: I am going to object,

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Judge. I object.

THE COURT: All right. Side-bar, counsel.

(Whereupon the following occurred at side-bar.)

THE COURT: I will let you state your objection more fully outside the presence of the jury.

MR. KEAHON: He indicated -- the Assistant District Attorney indicated that, to the jury that there may be a co-defendant. Number one. Who has entered a plea of guilty and may get no jail or some jail but has to testify truthfully. Totally improper.

THE COURT: Mr. Pearl.

MR. PEARL: Judge, I am trying to get to it. They should disregard codefendant testimony since this case relies on it?

THE COURT: Mr. Pearl, you stated facts before the jury. You are not supposed to do that because you are not a witness and it is supposed to be couched in a different form. You asked the question in an improper form. Ask one further question and that is it.

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2 MR. KEAHON: I am moving for a
3 mistrial on that and I take exception. I ask
4 you to instruct the jury that what he did was
5 improper.

6 THE COURT: No, I am not going to do
7 that at this point in time. I will instruct the
8 jury to disregard the last remark of counsel. I
9 will tell you to continue and ask a couple of
10 more questions.

11 MR. PEARL: Well, if I ask the
12 question with a co-defendant testifying, is that
13 good with just that?

14 THE COURT: Well --

15 MR. PEARL: Or cooperating witness.

16 THE COURT: You just can't state
17 facts. As far as cooperating witness, that is
18 valid. But to-- you went too far beyond that,
19 that is the promise asserting facts of a witness
20 testifying as far as eliciting. But the
21 question of form is important. So please be
22 guided accordingly. All right.

23 Thank you.

24 (Whereupon the following occurred
25 back in open court.)

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THE COURT: The jury will disregard
the last remark of counsel.

Please continue, Mr. Pearl.

MR. PEARL: Mr. Martino, would you
disregard a witness who was perhaps cooperating
with the District Attorney's Office on trial?

PROSPECTIVE JUROR: No.

MR. PEARL: You wouldn't disregard
that witness, you would listen to them and see
if all the evidence corroborates them?

PROSPECTIVE JUROR: Yes.

MR. PEARL: Mr. Calleja, how about
you?

PROSPECTIVE JUROR: Same.

MR. PEARL: Miss Desner.

PROSPECTIVE JUROR: Yes.

MR. PEARL: Miss Crawford?

PROSPECTIVE JUROR: Yes.

MR. PEARL: And Miss Price?

PROSPECTIVE JUROR: Yes.

MR. PEARL: Miss Laguerra?

PROSPECTIVE JUROR: Yes.

MR. PEARL: And Miss Roddy?

PROSPECTIVE JUROR: Yes.

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MR. PEARL: Mr. Castro?

PROSPECTIVE JUROR: Yes.

MR. PEARL: Mr. Zakrewshi?

PROSPECTIVE JUROR: Yes, if it was in
line with the evidence that was presented,
obviously.

MR. PEARL: Correct.

Mr. Stingley?

PROSPECTIVE JUROR: Yes.

MR. PEARL: Miss Roehrig?

PROSPECTIVE JUROR: Yes.

MR. PEARL: Mr. Farmer?

PROSPECTIVE JUROR: Yes.

MR. PEARL: And Mr. Moir?

PROSPECTIVE JUROR: Yes.

MR. PEARL: And Mr. Martino?

PROSPECTIVE JUROR: Yes.

MR. PEARL: Thank you very much.

Thank you, Judge.

THE COURT: Thank you, Mr. Pearl.

Thank you.

Mr. Keahon, you may inquire of the
prospective jurors.

MR. KEAHON: Thank you.

1 Proceedings

2 Good afternoon, folks. We have a
3 limited amount of time to speak with you.

4 Obviously, each of you throughout
5 your lives have been faced with many situations,
6 you made many decisions in your life for
7 yourself and your family and you come into this
8 courtroom with certain feelings about the
9 criminal justice system. So please because of
10 the limited amount of time, you people know
11 yourselves the best, before I sit down, please
12 let me know if there is anything about
13 yourselves that hasn't been spoken about but
14 which you think is important to my decision
15 making process in determining whether you should
16 sit on this case or not.

17 You know, when Mr. Whitehead first
18 came into this courthouse and was told of the
19 accusation made against him, he entered a plea
20 of not guilty. Those were his words then and
21 those are his words today. And that is why we
22 are here. And I thank you very much for each of
23 you responding to your jury summons.

24 I think all of us in this courtroom
25 know and appreciate that none of you really want

Proceedings

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2 to sit in judgment of another human being. I
3 think we probably all have a difficult time
4 enough dealing with our own lives and trying to
5 lead it the right way. But I think you also
6 understand and appreciate that we need people
7 like yourselves willing to put aside that
8 reluctance to sit in judgment on another person
9 and to take that responsibility and sit on this
10 case because if we didn't have folks like you,
11 the system would not work.

12 The Judge is not going to make a
13 determination on guilt or innocence in this
14 case. The prosecutor certainly isn't. I am not
15 going to. It is up to each of you individually
16 and collectively as judges, those of you that
17 are seated to really determine whether or not
18 the prosecution has proven their case beyond a
19 reasonable doubt.

20 Miss Price, do you feel that on
21 occasion innocent people are charged with
22 crimes?

23 PROSPECTIVE JUROR: Yes. But all
24 innocent until proven guilty. You are going to
25 have cases where people are going to be innocent

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and go to jail but the law is innocent until
proven guilty.

MR. KEAHON: Ma'am, do you believe
that on occasion innocent people are accused of
crimes?

PROSPECTIVE JUROR: Yes. I have seen
it in the newspapers.

MR. KEAHON: What about you, Ma'am?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Sir?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Sir?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Sir?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Ma'am?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Ma'am?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Mr. Farmer?

PROSPECTIVE JUROR: Yes.

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Sir?

PROSPECTIVE JUROR: Yes.

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MR. KEAHON: Miss?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Miss?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Miss Price, do you not only believe on occasion innocent people are charged with crimes but you can actually get to a stage like this, you are in a courtroom where you have jurors, prospective jurors seated, we have a fine Judge sitting on the bench, you have talented and experienced prosecutors, do you think even an innocent person can get to this stage?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Do you?

PROSPECTIVE JUROR: Yes.

PROSPECTIVE JUROR: Yes.

PROSPECTIVE JUROR: Yes.

MR. KEAHON: I will look quick.

And I think you said it also, Miss Price, not only can innocent people be accused of crimes and get to this stage in the proceeding but they can even get convicted.

PROSPECTIVE JUROR: It is possible.

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MR. KEAHON: You all good with that?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: You all understand what we are asking you to do? How important this job is going to be for you?

I would suggest to you that probably other than the most important decisions you have made in your life for your family and your children, this is the most important decision.

You have heard about the serious nature of the crime alleged. You have heard, I am sure you know the serious consequences to all parties in this courtroom.

Is there anything about this case, Miss Price, that you feel inside, that you have already made a decision a certain way or because of the crimes that are -- my client's accused of, that you are kind of leaning like gees, maybe the fella's guilty?

PROSPECTIVE JUROR: No. Innocent until proven guilty.

MR. KEAHON: What about you, Ma'am?

PROSPECTIVE JUROR: I feel the same.

PROSPECTIVE JUROR: Yes.

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PROSPECTIVE JUROR: Yes.

MR. KEAHON: Every day I read the papers I see someone's arrested for a crime. I automatically think they probably got the right guy. That is what we would hope.

You understand, as we sit here the Judge has told you about the presumption of innocence. These are not technical terms. This is what our country is based upon. Here we presume someone accused, to be innocent.

Miss Price, do you agree with Mr. Whitehead is presumed to be innocent? You feel that way now?

PROSPECTIVE JUROR: He is innocent until proven guilty.

MR. KEAHON: Ma'am.

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Ma'am.

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Sir.

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Sir, is that a reluctance or just quiet?

PROSPECTIVE JUROR: I am just quiet.

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MR. KEAHON: Sir.

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Ma'am.

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Sir.

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Ma'am.

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Ma'am.

PROSPECTIVE JUROR: Yes.

MR. KEAHON: The Judge has told you also about the burden of proof. The burden of proof is on this table right here. The accusation has been made. They must prove it, if they can. It never shifts over to this table.

Each of you understand that?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Can appreciate that?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: None of you have sat on a criminal trial before and I am sure you are saying to yourself, how do I do the best job I can. How do I ensure that whatever verdict I

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2 will come up with, it is the right one. And I
3 think all of us would agree and suggesting to
4 you that all you need is your common sense, your
5 logic and your past experiences in life because
6 every day of every week of every month of every
7 year, you make important decisions using those
8 things for yourself and your family.

9 Do each of you promise me that you
10 will use that good common sense and logic to
11 determine what is true and what is not in this
12 case?

13 PROSPECTIVE JUROR: Yes.

14 MR. KEAHON: Ma'am, do you believe
15 that a witness could be called to the witness
16 stand by the prosecution, be asked to take an
17 oath and swear to tell the truth and yet lie?

18 PROSPECTIVE JUROR: Yes.

19 MR. KEAHON: Do you, Mr. Farmer?

20 PROSPECTIVE JUROR: Yes.

21 MR. KEAHON: Mr. Calleja?

22 PROSPECTIVE JUROR: Yes.

23 MR. KEAHON: Sir?

24 PROSPECTIVE JUROR: Yes.

25 MR. KEAHON: Ma'am?

1 Proceedings

2 PROSPECTIVE JUROR: Yeah.

3 MR. KEAHON: Ma'am?

4 PROSPECTIVE JUROR: Yes.

5 MR. KEAHON: How do you think you
6 would make that determination, sir, if in fact
7 you were being told the truth or not? You have
8 never met the witness before. You have never
9 talked to him. You have never spoken to him.
10 You may only see him for a half hour on the
11 stand.

12 PROSPECTIVE JUROR: Look at him in
13 the context of everything else that is
14 presented.

15 MR. KEAHON: Would you also look to
16 see if the person, the witness is looking to get
17 a benefit from the prosecution?

18 PROSPECTIVE JUROR: No.

19 MR. KEAHON: Do you think a witness
20 that has nothing to gain from their testimony or
21 the outcome of the case should be considered the
22 same as a witness that is hoping to get a
23 benefit from the prosecution?

24 PROSPECTIVE JUROR: Yes.

25 MR. KEAHON: I probably asked it

1 Proceedings

2 in-artfully. I don't know what the question
3 means.

4 PROSPECTIVE JUROR: Yes, I believe
5 they should be given the same credibility once
6 they're under oath.

7 MR. KEAHON: So you believe that if a
8 person is hoping to get a benefit from the
9 prosecution because of their testimony, you
10 shouldn't consider that?

11 PROSPECTIVE JUROR: It depends what
12 you mean by consider.

13 MR. KEAHON: In determining the
14 credibility.

15 PROSPECTIVE JUROR: No.

16 MR. KEAHON: Okay.

17 If you had to make an important decision
18 in your life for your family -- I will withdraw
19 that.

20 Miss Price, do you think you would
21 want to consider whether or not a witness under
22 oath who is giving testimony is hoping to get a
23 benefit from the prosecution?

24 PROSPECTIVE JUROR: Am I hoping?

25 MR. KEAHON: No. Do you think you

Proceedings

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2 should consider whether or not a witness is
3 hoping to get a benefit from the prosecution?

4 PROSPECTIVE JUROR: Say the question
5 again. I am sorry.

6 MR. KEAHON: Okay.

7 Would you want to consider in judging
8 the credibility of a witness called by the
9 prosecution, would you want to consider whether
10 or not they were hoping to get a benefit from
11 the prosecution for their testimony? Would you
12 consider that?

13 PROSPECTIVE JUROR: Yeah, I would.

14 MR. KEAHON: Ma'am.

15 PROSPECTIVE JUROR: Yeah.

16 MR. KEAHON: Would you, Ma'am?

17 PROSPECTIVE JUROR: No.

18 MR. KEAHON: You wouldn't?

19 PROSPECTIVE JUROR: No.

20 MR. KEAHON: Do you think in judging
21 the credibility of a witness, that you would
22 want to look to see if they have an interest in
23 the outcome of the case?

24 PROSPECTIVE JUROR: Oh yeah. Yeah.

25 MR. KEAHON: Okay.

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What about you, sir?

PROSPECTIVE JUROR: I would try to give them the same credibility as a witness.

MR. KEAHON: I am sorry?

PROSPECTIVE JUROR: Testimony.

MR. KEAHON: So you would or would not consider whether they were hoping to get a benefit?

PROSPECTIVE JUROR: I wouldn't.

MR. KEAHON: I am sorry?

PROSPECTIVE JUROR: I wouldn't.

MR. KEAHON: What about you, sir?

PROSPECTIVE JUROR: I would look deep and I would go beyond what you were saying. I feel that I have dealt with so many people, so many different types, that if he has got an edge to get out of it, he would have to be awfully good.

MR. KEAHON: How do you feel about that, Mr. Stingley?

PROSPECTIVE JUROR: In a perfect world you would like to give the same. I think you have to sit back and assess what the reality is.

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2 MR. KEAHON: If you had to make a
3 decision in your personal life and had to get
4 input from a particular person and you knew that
5 person was going to give you their advice but
6 they benefit from the advice they gave you, if
7 you accepted it, wouldn't you consider that in
8 making your decision?

9 PROSPECTIVE JUROR: You have to.

10 MR. KEAHON: Sure.

11 What about you, Ma'am?

12 PROSPECTIVE JUROR: I agree but
13 hopefully you are not going to base it just on
14 what one person says, no matter whether they're
15 benefiting or not from it.

16 MR. KEAHON: True.

17 PROSPECTIVE JUROR: I hope the
18 evidence goes beyond that.

19 MR. KEAHON: You are absolutely right
20 but I am asking specifically about credibility
21 issues.

22 The Judge is going to tell you in
23 this case as in every case, one of your major
24 decision making processes is to determine the
25 credibility of each witness individually and

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2 then collectively. So I think you would want,
3 would you not, Ma'am, want to know if any
4 particular witness was hoping to gain a benefit?

5 PROSPECTIVE JUROR: Oh sure.

6 MR. KEAHON: Mr. Farmer?

7 PROSPECTIVE JUROR: Yes, I would like
8 to know that.

9 MR. KEAHON: Mr. Moir?

10 PROSPECTIVE JUROR: Of course.

11 MR. KEAHON: Sir?

12 PROSPECTIVE JUROR: Yes.

13 MR. KEAHON: We are a nation of
14 routism. We rout in politics. We rout in
15 sports.

16 Can I have your assurance that none
17 of you are going to rout for either side in this
18 case, that your only concern is going to be
19 reach the right decision, the best decision you
20 can based upon the evidence or lack of evidence?

21 Do I have that assurance, Ma'am?

22 PROSPECTIVE JUROR: Yes.

23 MR. KEAHON: Sir, do you believe
24 that a, a law enforcement official can take the
25 witness stand and take an oath and tell the

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truth and lie?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Do you think it happens?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Mr. -- sir?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Ma'am?

PROSPECTIVE JUROR: Yes.

PROSPECTIVE JUROR: Yes.

MR. KEAHON: Sir?

PROSPECTIVE JUROR: Yes.

MR. KEAHON: It is getting later,
some of you have sleepy eyes. I want to move
this along.

A number of you have friends or
relationships or relatives that involve law
enforcement. And you heard the witness list
read to you and there are a number of
detective's names that were read to you. You
can understand my concern that one or more of
you might give more credibility to a law
enforcement official just because they're law
enforcement.

Do you think you would do that,

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Miss Price?

PROSPECTIVE JUROR: No.

MR. KEAHON: Miss Roddy?

PROSPECTIVE JUROR: I am not sure.

MR. KEAHON: You know every day, not every day but quite often when we have trouble, we have problems, we call for the police to help us and they respond and they help us. And it might be natural for each of you because of that and because you want to trust law enforcement, that when you are sitting on a jury and they're called as witnesses, you automatically start accepting what they have to say merely because of their title, badge or uniform. And that may be natural but I need an assurance from each of you that any law enforcement official that is called into this courtroom, that if you start to have that feeling, push it aside and say no, I promised Mr. Keahon and I promised the Court and I am going to treat every witness the same and nobody has an edge in this case, notwithstanding your great experience with police or yourself or your brother or your sister-in-law or your father being a police officer.

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Can you understand how important that is?

Is there any of you that -- Ma'am, do you feel that you might not be able to do that?

PROSPECTIVE JUROR: No.

PROSPECTIVE JUROR: I would have to -- I guess I would have to listen really to exactly what they're saying and everything.

MR. KEAHON: Sure.

PROSPECTIVE JUROR: I wouldn't just say I believe everything that is said but I would look into it.

MR. KEAHON: If you were selected, can you promise me that you would start listening to each witness with a blank slate and let them prove and establish to you that what they're saying is accurate?

PROSPECTIVE JUROR: Yeah.

MR. KEAHON: And if it is a law enforcement official or detective, they don't start ahead of everybody else.

PROSPECTIVE JUROR: No, I can understand.

MR. KEAHON: And I think really, when

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2 we talk about these rights and we talk about
3 issues that I am trying to discuss with you,
4 just think about a good friend of yours sitting
5 in the courtroom as a defendant and what rights
6 you would want that jury to ensure that they
7 gave him. And if you look at it that way, then
8 whatever feelings you normally have, you are
9 going to push them aside.

10 Can each of you do that?

11 Sir?

12 PROSPECTIVE JUROR: Yes.

13 MR. KEAHON: Ma'am?

14 PROSPECTIVE JUROR: Yes.

15 PROSPECTIVE JUROR: Yeah.

16 MR. KEAHON: Are we starting this
17 case now, if each of you are selected, with a
18 jury that has not made any decision in this case
19 and truly believes that Mr. Whitehead is
20 presumed to be innocent, and you are going to
21 make them prove it beyond a reasonable doubt, if
22 they can?

23 Is that your position, Miss Price?

24 PROSPECTIVE JUROR: Yes.

25 MR. KEAHON: Ma'am?